IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.31951 OF 2006
AND
M.P.NOS.1 TO 3 OF 2006

S.Ravichandran .. Petitioner

Vs.

1.The Commissioner for
Municipal Administration,
Municipal Administration Department,
Chepauk,
Chennai-600 005.
2.The Municipal Commissioner,
Kancheepuram Municipality,
Kancheepuram & Dist.
3.The Municipal Commissioner,
Villupuram Municipality,
Villupuram & Dist. .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the first respondent in his proceedings ROC No.36731/2005/F1, dated 5.8.2006 transferring and posting the petitioner from Kancheepuram Municipality to Villupuram Municipality and the consequential order of the second respondent in his proceedings Na.Ka.No.6629-2006-E2, dated 9.8.2006 and quash the same and to direct the respondents to permit the petitioner to continue in service of the second respondent under the Tamil Nadu Municipal Engineering Subordinates Service Rules, 1970.

For Petitioner : Mr.R.Krishnan
For Respondents: Mr.N.Senthilkumar, AGP for R1
Mr.P.Srinivas for R3
Mr.K.Elango for R2

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ORDER

In this writ petition, a challenge is made to an order of transfer of the petitioner from Kancheepuram Municipality to Villupuram Municipality by proceedings of the first respondent in ROC No.36731/2005/F1, dated 5.8.2006.

2.The affidavit filed in support of the petition is perused. The court heard the learned counsel on either side.

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3.The petitioner is working as Meter Reader in the second respondent Municipality. On certain allegations, an order of transfer, transferring him from Kancheepuram Municipality to Villupuram Municipality, was served upon him. The grievance of the petitioner is that only on the basis of untenable and false allegations, the order of transfer has been made. When the orders were passed, he was working as Meter Reader. Since he was suffering from Jaundice, he was applying for medical leave. He was called upon to appear for medical examination, which he could not do. On 5.8.2006, the present order was served upon him, transferring him to Villupuram Municipality in the existing vacancy. It was served upon him only on 31.8.2006. Challenging the same, this writ petition has been brought forth.

4.In support of the writ petition, the learned counsel for the petitioner stressed on two points. Firstly, all the allegations made, pursuant to which transfer was made, were baseless and hence, transfer order should not have been passed. Secondly, if at all any transfer was to be made, it should have been within the same Municipality and not outside. But, in the instant case, he has been transferred from Kancheepuram Municipality to Villupuram Municipality, which is in violation of the Rule to be followed in respect of transfer and hence, the order of transfer has got to be struck down. Added further the learned counsel that originally, there was an order of transfer of the petitioner from Kancheepuram Municipality to Villupuram Municipality on the very same allegation of corrupt practices and that was subsequently cancelled by the District Collector by an order, dated 26.12.2005 and thus, it would be quite clear that the respondents have committed malice and under these circumstances, the impugned order has got to be set aside.

5.In answer to the above, the learned counsel for the respondents would submit that while the petitioner was working as Meter Reader in Kancheepuram Municipality, several allegations that he was demanding bribe for tap connections were made; that the first respondent has sought for report from the second respondent about the allegations; that those allegations were verified and the second respondent has sent a detailed report on 31.7.2006 and on the strength of the said report, it appears that the first respondent has passed the impugned order; that the petitioner evaded the service; that he applied for medical leave; that he failed to report before the third respondent; that while the matter stood thus, he has approached this court and has obtained interim stay; that he was transferred under Rule 31(c) of the Tamil Nadu Municipal General Rules, 1970; that a reading of the same would clearly reveal that the order of transfer is perfectly correct and valid and hence, the writ petition has got to be dismissed.

6.From the submissions made, it would be quite clear that the petitioner was working as Meter Reader in Kancheepuram Municipality. By an order under challenge, he was transferred to Villupuram Municipality. Despite service of the same, he has not reported duty, but he applied for medical leave. Pending same, he approached this court and got an order of interim stay. It is not in controversy that the post is one transferrable in nature. According to the Department, there were allegations of corrupt practice and the second respondent has made a detailed enquiry and gave a

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report to the first respondent. On the strength of the same, he was transferred. At this juncture, the learned counsel for the petitioner would submit that even if he was to be transferred, he could be transferred within the same Municipality and not outside. He relied on the rules in Tamil Nadu Municipal Engineering (Subordinates) Service Rules, 1970 and submit that there are special rules available and it is prevailing the regular rule and thus, the petitioner would come under Class No.8 and hence, he could be transferred within the Municipality and not outside.

7.On the contrary, the learned counsel for the respondents brought the notice of the court Rule 31(c), which reads as follows:

> "Notwithstanding anything contained in sub-rule(b), the Director of Municipal Administration or such other authority to whom power may be delegated may transfer a member of a service from one Municipality to another."

After comparison of the rules, the court is of the considered opinion that it is a fit case where he could be transferred under Rule 31(c), as applied by the Authority and on the allegations made and on the report filed, the Director of Municipal Administration has transferred him from Kancheepuram Municipality to Villupuram Municipality. This court is unable to notice any malice also. Since it is a transferrable post and no malice is noticed, the order of transfer cannot be questioned under these circumstances. Further, from the materials available, it could be seen that there was originally an order of transfer and the same was cancelled by the District Collector, by an order, dated 26.12.2005. It is pertinent to point out that whether there was any report called for on the allegations made against the petitioner and whether they were considered or not does not find place in the order of the District Collector. Now, it is brought to the notice of the court that the first respondent has not immediately acted on the complaint, but has called for the report from the second respondent and on the basis of the report, he has acted and under these circumstances, no malice, in the opinion of the court, could be attributed to the first respondent while passing the order under challenge.

8.Under these circumstances, the writ petition fails and the same is dismissed. No costs. Consequently, the connected MPs are also dismissed.
vvk

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Commissioner for
Municipal Administration,
Municipal Administration Department,
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2.The Municipal Commissioner,
Kancheepuram Municipality,
Kancheepuram & Dist.
3.The Municipal Commissioner,
Villupuram Municipality,
Villupuram & Dist.
+ One cc to Mr. K. Elango, Advocates SR 58085
+ One cc o mr. P. Srinivas, Advocate sR 57751
+ One cc to Mr. R. Krishnan, Advocate sR 57790
+ One cc to Govt Pleader SR 57781
TS (co)
sg 21/9/07 W.P.NO.31951 OF 2006

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